

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSE ENRIQUE NUÑEZ, III,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 18-CV-4492
	:	
WARDEN JANINE QUIGELY, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this 20th day of December, 2018, upon consideration of *pro se* Plaintiff Jose Enrique Nuñez, III's Amended Complaint (ECF No. 11), it is **ORDERED** that:

1. The Amended Complaint is **DISMISSED without prejudice** for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), for the reasons set forth in the Court's Memorandum.

2. Nuñez is given leave to file a second amended complaint within thirty (30) days of the date of this Order in the event he can state a plausible basis for a constitutional claim. Any second amended complaint shall name all defendants in the caption of the second amended complaint and should state how each defendant was responsible for violating Nuñez's rights. The second amended complaint should not rely on or refer to the initial Complaint to state a claim. If Nuñez cannot state a claim in light of the law set forth in the Court's Memorandum, he should not include that claim in his second amended complaint. Upon the filing of a second amended complaint, the Clerk shall not make service until so **ORDERED**.

3. The Clerk of Court is **DIRECTED** to send Nuñez a blank form complaint to be used by a prisoner filing a civil rights action bearing the civil action number for this case. Nuñez may use this form to prepare his second amended complaint.

4. If Nuñez fails to file a second amended complaint, his case may be dismissed for failure to prosecute without further notice.

BY THE COURT:

/s/ Gerald Austin McHugh
United States District Judge